

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 943

Introduced by Assembly Member Mendoza

February 26, 2009

An act to add ~~Sections 12940.4 and 12940.5 to the Government Chapter 3.6 (commencing with Section 1024.5) to Part 2 of Division 2 of the Labor Code~~, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 943, as amended, Mendoza. Employment: credit reports.

The federal Fair Credit Reporting Act (FCRA) and the state Consumer Credit Reporting Agencies Act define and regulate consumer credit reports and authorize the use of consumer credit reports for employment purposes, pursuant to specified requirements. The FCRA provides that it does not preempt state law, except as specifically provided or to the extent that state laws are inconsistent with its provisions.

Existing federal and state law specify the procedures that an employer is required to follow before requesting a report and if adverse action is taken based on the report. Under existing law, an employer may request a credit report for employment purposes so long as he or she provides written notice of the request to the person for whom the report is sought. Existing law requires that the written notice inform the person for whom the consumer credit report was sought of the source of the report and contain space for the person to request a copy of the report. Existing law further requires an employer, whenever he or she bases an adverse employment decision on information contained in a consumer credit report, to advise the person for whom the report was sought that an adverse action was taken based upon information contained in the

report and provide the person with the name and address of the consumer credit agency making the report.

This bill would prohibit an employer, with the exception of certain financial institutions, from obtaining a consumer credit report for employment purposes unless the information is (1) substantially job-related, meaning that the position of the person for whom the report is sought has access to money, other assets, or confidential information, and (2) the position of the person for which the person is sought is a managerial position, a position in a city, county, or both city and county, that of a sworn peace officer or other law enforcement position, or a position for which the information contained in the report is required to be disclosed by law or to be obtained by the employer.

~~Under existing law, it is an unlawful employment practice for an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of a person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment. Existing law, the federal Fair Credit Reporting Act, permits an employer to obtain a credit report regarding a person if the employer discloses to the person that a credit report may be obtained by the employer and the person has authorized the procurement of the credit report.~~

~~This bill would prohibit an employer, unless based on a bona fide occupational qualification, from refusing to hire or employ a person, refusing to select a person for a training program leading to employment, barring or discharging a person from employment or from a training program leading to employment, discriminating against a person in compensation or in terms, conditions, or privileges of employment, or taking any other adverse employment action against a person because the person does not authorize the employer to obtain a credit report regarding the person. The bill would create a rebuttable presumption of an unlawful employment practice when an employer takes adverse employment action against a person within 60 days of the person denying authorization for the employer to obtain a credit report regarding the person.~~

~~This bill would also, commencing on July 1, 2011, require employers to submit to the Department of Fair Employment and Housing every 6~~

months a list of each applicant for employment and each employee who has applied for a promotion during the 6-month period, the race and gender of each applicant and employee specified, whether a credit report was obtained regarding each applicant and employee specified, and a list of all applicants offered employment and employees offered promotion during the 6-month period. The bill would then require the Department of Fair Employment and Housing, commencing on March 1, 2012, to annually report to the Legislature for the prior calendar year regarding the use of credit reports by employers and provide an analysis of whether the use of consumer credit reports has a disparate impact on employment of persons with respect to race and gender.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.6 (commencing with Section 1024.5)
2 is added to Part 2 of Division 2 of the Labor Code, to read:
3
4 CHAPTER 3.6. EMPLOYER USE OF CONSUMER CREDIT REPORTS
5
6 1024.5 (a) An employer shall not use a consumer credit report
7 for employment purposes unless the following criteria are satisfied:
8 (1) The information contained in the report is substantially
9 job-related, meaning that the position of the person for whom the
10 report is sought has access to money, other assets, or confidential
11 information.
12 (2) The position of the person for whom the report is sought is
13 any of the following:
14 (A) A managerial position.
15 (B) A position in a city, county, or both city and county.
16 (C) That of a sworn peace officer or other law enforcement
17 position.
18 (D) A position for which the information contained in the report
19 is required to be disclosed by law or to be obtained by the
20 employer.
21 (b) This section does not apply to a person or business subject
22 to Sections 6801 to 6809, inclusive, of Title 15 of the United States
23 Code and state and federal statutes or regulations implementing
24 those sections if the person or business is subject to compliance

oversight by a state or federal regulatory agency with respect to those laws.

~~SECTION 1. Section 12940.4 is added to the Government Code, to read:~~

~~12940.4. (a) An employer shall, commencing with the first submission date of July 1, 2011, once per every six months, submit to the Department of Fair Employment and Housing the following:~~

~~(1) A list of each applicant for employment and each employee who applied for a promotion during the six-month period.~~

~~(2) The race and gender of each person listed pursuant to paragraph (1).~~

~~(3) Whether a consumer credit report was obtained regarding each person listed pursuant to paragraph (1).~~

~~(4) A list of all applicants offered employment and employees offered a promotion during the six-month period.~~

~~(b) Commencing on March 1, 2012, and not later than March 1 of each year thereafter, the Department of Fair Employment and Housing shall annually report to the Legislature for the prior calendar year regarding the use of consumer credit reports by employers and provide an analysis of whether the use of consumer credit reports has a disparate impact on employment of persons with respect to race and gender. The report shall include, but not be limited to, the following:~~

~~(1) The number of applicants for employment and employees who applied for a promotion, categorized by race and gender.~~

~~(2) The number of applicants for employment offered employment and employees who applied for a promotion offered a promotion, categorized by race and gender.~~

~~(3) The number of applicants for employment and employees who applied for a promotion for whom a consumer credit report was obtained by the employer, categorized by race and gender.~~

~~(4) The number of applicants for employment offered employment and employees offered a promotion whose consumer credit reports were obtained by the employer, categorized by race and gender.~~

~~(c) For purposes of this section and Section 12940.5, "consumer credit report" has the same meaning as provided in subdivision (c) of Section 1785.3 of the Civil Code.~~

~~SEC. 2. Section 12940.5 is added to the Government Code, to read:~~

1 ~~12940.5.—(a) Unless based upon a bona fide occupational~~
2 ~~qualification, an employer shall not refuse to hire or employ a~~
3 ~~person, refuse to select a person for a training program leading to~~
4 ~~employment, bar or discharge a person from employment or from~~
5 ~~a training program leading to employment, discriminate against a~~
6 ~~person in compensation or in terms, conditions, or privileges of~~
7 ~~employment, or take any other adverse employment action against~~
8 ~~a person because the person does not authorize the employer to~~
9 ~~obtain a consumer credit report regarding the person.~~

10 ~~(b) A rebuttable presumption of a violation of subdivision (a)~~
11 ~~is created when an employer takes adverse employment action~~
12 ~~against a person within 60 days of the person having denied~~
13 ~~authorization for the employer to obtain a consumer credit report~~
14 ~~regarding the person.~~